



Comptroller General  
of the United States  
Washington, D.C. 20548

Van Schaik  
14529-1

## Decision

**Matter of:** Mobile/Modular Express

**File:** B-246183

**Date:** November 13, 1991

Kenneth L. Zuremski for the protester,  
Jack Leemgraven, for Allenhurst Industries, Inc., an  
interested party.  
Maj. David M. Pronchick, Esq., and Roger J. McAvoy, Esq.,  
Department of the Air Force, for the agency.  
John W. Van Schaik, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

### DIGEST

Protest that agency should not have requested best and final offers (BAFO) and should not have disclosed that protester was the apparent awardee is dismissed as untimely since protester received the request for BAFOs 2-working days before closing date for receipt of BAFOs and therefore had a reasonable time to protest before the closing date.

### DECISION

Mobile/Modular Express protests the award of a contract to Allenhurst Industries, Inc. under request for proposals (RFP) No. F19650-91-R-8001, issued by the Air Force as a small business set-aside for lease and maintenance of trailers.

We dismiss the protest as untimely.

The Air Force received three proposals in response to the solicitation. After the initial evaluation of proposals, the agency contemplated awarding the contract without discussions to Mobile/Modular. With that goal in mind, on September 10, 1991, the agency notified the other two offerors, but not Mobile/Modular, that Mobile/Modular was the apparent successful offeror. That notice was issued pursuant to Federal Acquisition Regulation § 15.1001(b)(2) which requires that, in small business set-asides, prior to award, the contracting officer is required to inform unsuccessful offerors of the name and location of the apparent successful offeror.

Subsequently, the agency determined that the award to Mobile/Modular without discussions was inappropriate and, therefore, by letter of September 14, the agency rescinded the September 10 notice. The September 14 letter, which was telecopied to Mobile/Modular, included a copy of the September 10 notice of proposed award to Mobile/Modular and also requested best and final offers (BAFO) by September 18. Mobile/Modular did not protest at that time but instead submitted a BAFO on September 18. After evaluating the BAFOs, the agency decided to award the contract to Allenhurst Industries, rather than Mobile/Modular. By letter dated September 23, the agency informed Mobile/Modular that Allenhurst was the apparent successful offeror.

By letter dated September 24, Mobile/Modular protested to the Air Force that the agency had provided an unfair advantage to its competitors by revealing to those firms that Mobile/Modular was the proposed awardee. According to the protester, its competitors knew the prices it had submitted on other projects and by knowing that it was the proposed awardee, Allenhurst, the eventual awardee, was able to lower its price in order to become the low-priced offeror. Mobile/Modular argues that the Air Force should not have requested BAFOs after revealing that Mobile/Modular was in line for award but should have awarded the contract based on initial proposals. Mobile/Modular subsequently filed this protest with our Office on October 10.

Both the Air Force and the awardee argue that the protest must be dismissed as it was not timely filed.

Under our Bid Protest Regulations, where, as here, a protest is filed first with the contracting agency, a subsequent protest to our Office will be considered only if the initial agency-level protest was timely. 4 C.F.R. § 21.2(a)(3) (1991); R&B Equip. Co., B-219560.2, Sept. 5, 1985, 85-2 CPD ¶ 272. To be timely under our Regulations, a protest concerning alleged improprieties in the conduct of a negotiated procurement must be filed either with this Office or with the contracting agency before the next closing date for receipt of proposals following the alleged impropriety. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991); Hollingshead Int'l, B-227853, Oct. 19, 1987, 87-2 CPD ¶ 372. Since Mobile/Modular did not protest to the Air Force until September 24, after the September 18 closing date for the receipt of BAFOs, and after it learned that it was not the successful offeror, the protest to the agency is not consistent with our timeliness standards.

Nevertheless, Mobile/Modular argues that it could not have filed a protest in the short period of time between its receipt of the request for BAFOs and the closing date. In this respect, the protester argues that since the BAFO

request was received in its office on September 14, a Saturday, it could not be acted upon until Monday, September 16, leaving only 2 days until the due date for BAFOS; an inadequate time to prepare a protest. We do not agree. In similar situations, we have found that a period of 2 days afforded an offeror a reasonable time to file a protest before bid opening or the closing date for receipt of proposals. See R&B Equip. Co., supra; Reliance Steel Prods. Co., B-206754, Jan. 24, 1983, 83-1 CPD ¶ 77. In this regard, we see no reason why 2 days was not an adequate time within which to prepare this protest which involves only one relatively simple issue.

Since Mobile/Modular's initial protest was not timely filed with the Air Force, its subsequent protest to our Office also is untimely and will not be considered.

The protest is dismissed.



John Brosnan  
Assistant General Counsel